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From: Connolly, William (BRI)
Sent: Wednesday, May 30, 2012 9:30 AM
To: Han, Linda (DPH)
Subject: FW: Regarding the DPH chemist breach
Attachments: Sample Commonwealth Opposition to Subpoena.doc; Sample DPH Motion to Quash.docx; Sample Protective Order.doc; May 29 ltr to dph.docx

Dear Dr. Han: Yesterday, I mailed a letter to you (with enclosures) regarding a request we received from a defense attorney (see May 29th letter attached). Please disregard that letter because today I received the message below and the attached information from the Attorney General's Office.

ADA Bill Connolly

From: Nardone, Andrea (DAA)
Sent: Wednesday, May 30, 2012 9:19 AM
To: Connolly, William (BRI)
Subject: FW: Regarding the DPH chemist breach

Hi Bill,

This is what I have on the chemist breach. I hope this helps.

Andrea

From: Monroe, Natalie (AGO)
Sent: Friday, April 27, 2012 3:42 PM
To: DAA-DL-APPLT CHIEFS
Subject: Requests for DPH personnel and disciplinary documents

As many of you know, there was a breach of the recording protocols at the Department of Public Health's (DPH) drug lab on June 14, 2011. (A brief summary of the incident is at the end of this e-mail.) As many also know, defense attorneys have been seeking documents about the incident, including the former chemist's personnel files and the investigation/disciplinary reports. We've been working with DPH to oppose production of these documents, which are privileged and confidential (and irrelevant). Because it appears that some DAOs are being hit with motions for DPH documents, I thought it might be helpful to circulate samples oppositions, along with a motion for a protective order.

Also, I note that DPH's personnel and disciplinary records do not fall within the automatic disclosure requirements of Mass. R. Crim. P. 14. See, e.g., Com. v. Wanis, 426 Mass. 639 (1998). Instead, defense counsel must file a Rule 17 motion for the documents. Id. Some courts and defense counsel forget about this and therefore order DAOs to turn over the materials.

The documents are as follows:

1. Commonwealth Opposition to Subpoena: This is a sample from Plymouth County (thank you!). While it's styled as a motion to reconsider, it could easily be turned into an opposition to a Rule 17 motion.
2. DPH Motion to Quash: This is a sample of what we've filed on behalf of DPH.

3. Protective Order: Can be used if the documents are ordered to be produced. We also have a similar version that we file on behalf of DPH.

Summary

DPH has determined that there was a one-time violation of the recording protocols by chemist A.D. The breach occurred on June 14, 2011, and due to mechanisms in place at the lab, the incident was discovered quickly. Investigation revealed that the incident involved recording protocols only. It was limited to a single batch of drug samples, all out of Norfolk County. The investigation also revealed no evidence that the integrity of any drug samples (from that batch or otherwise) was impacted. Finally, the chemist involved was considered an exemplary employee and she had no prior disciplinary issues.

Please don't hesitate to contact me if you have any questions.

Regards,
Natalie

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